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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/578,340	03/06/2007	Larry Lapanashvili	088790-000300US	6589

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EXAMINER

LAVERT, NICOLE F

ART UNIT	PAPER NUMBER
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3762

MAIL DATE	DELIVERY MODE
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11/24/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/578,340	Applicant(s) LAPANASHVILI, LARRY	
	Examiner NICOLE F. LAVERT	Art Unit 3762	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 July 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 15-32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 15-32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 April 2008 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>8/6/07</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 22-30 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In regards to claim 22, line 10, the claim limitation "...is varied..." is stated in a passive voice and needs to be in an active voice so as to positively recite said step. It is suggested to use the language "...varying..." to positively recite the limitation step.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. **Claims 15, 17-22, 24-28, 30 & 32** are rejected under 35 U.S.C. 102(b) as being anticipated by May (US 2003/0176901).

May discloses an electrotherapy apparatus (e.g., element 1) and method for applying electrical stimulation to a muscle or group of muscles [e.g., 0001], wherein said electrical stimulation comprises electrical pulses, said electrical stimulation having parameters comprising at least some of an amplitude, a pulse repetition frequency, etc., and a microprocessor (e.g., element 6) adapted to vary at least one of said amplitude, frequency, etc. in accordance with a

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predetermined pattern stored in the associated microprocessor (e.g., via disclosed memory, element 7) within pre-specified limits in the course of the treatment extending over many heart cycles (e.g., [0051]-[0053], [0059] & [0077]), wherein the plurality of said parameters are simultaneously varied [e.g., 0049]. NOTE, the examiner has chosen amplitude and frequency, therefore, the other dependent claims that do not first set forth which parameter the claimed method or device has (such as duration) have been met.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. **Claims 16 & 23** are rejected under 35 U.S.C. 103(a) as being unpatentable over May (US 2003/0176901).

May discloses the claimed invention having an apparatus and a method for applying electrical stimulation by way of varying the stimulation's amplitude except wherein said variation of amplitude is in a range from ± 10 V from a nominal value selected in the range from typically 10 to 50 V. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the apparatus and method as taught by May with utilizing a variation of the amplitude in the range from ± 10 V from a nominal value selected in the range from typically 10 to 50 V since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art [*In re Aller*, 105 USPQ 233].

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7. **Claims 29 & 31** are rejected under 35 U.S.C. 103(a) as being unpatentable over May (US 2003/0176901).

May discloses the claimed invention having an apparatus and a method for applying electrical stimulation by utilizing a microprocessor having pre-specified limits in the course of an extended treatment except wherein said treatment lasts for more than 15 minutes. It would have been obvious to one having ordinary skill in the art at the time the invention was made to extend said treatment for more than 15 minutes, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

Response to Arguments

1. Applicant's arguments with respect to claims 15-32 have been considered but are moot in view of the new ground(s) of rejection as necessitated by amendments.
2. Applicant's arguments, filed 27 July 2009, with respect to the §101 claim rejections have been fully considered and are persuasive and have been withdrawn.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to NICOLE F. LAVERT whose telephone number is (571)270-5040. The examiner can normally be reached on M-F 7:30-5:00p.m. (alt. fridays).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes can be reached on 571-272-4955. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/George R Evanisko/
Primary Examiner, Art Unit 3762

/Nicole F. LaVert/
Examiner, Art Unit 3762